

# Clean Slate!

## Expanded and Automated Sealing Comes to Pennsylvania

Sharon M. Dietrich  
Community Legal Services, Inc.  
State Criminal Justice Network Conference 2019  
August 2, 2019

# Current PA Expungement & Sealing Eligibility

- Expungement:
  - Non-convictions
  - Completed diversion program (ARD/Section 17/diversion courts)
  - Completed Satisfaction and Agreement under Pa.R.Crim.P. 546
  - Summary offense convictions/five years arrest-free
  - Convictions of a 70+ year-old/10 years arrest-free
  - Many juvenile cases
- Sealing of most misdemeanors if the petitioner has been ***free of conviction for 10 years since disposition.***
- Expungement completely destroys info; sealing preserves it for law enforcement/FBI rap sheets but does not provide it to others.

Clean Slate:  
The Future of Sealing Will Be  
Automated  
(Except When It Won't Be)



# Clean Slate Bill Comes to PA

- ***Automatically seals*** most non-violent misdemeanor convictions after 10 conviction-free years, summary convictions after 10 years, and non-convictions 60 days after disposition.
- ***Expanded sealing*** to many first degree misdemeanors and to second degree simple assault, and other more minor eligibility expansions.



# Broad Support for Clean Slate

- Bipartisan sponsors: Rep. Delozier (R-Cumberland), Rep. Harris (D-Phila.), Sen. Wagner (R-York), Sen. Williams (R-Phila.)
- Justice Action Network (FreedomWorks, CAP)
- State and local Chambers of Commerce.
- Koch Industries and Americans for Prosperity-PA.
- Phila. Eagles Malcolm Jenkins, Chris Long, Torrey Smith.
- Editorials from Reading and York newspapers.
- Op-eds from Pittsburgh DA and Uber.

# Clean Slate Passes!

## HB 1419 Becomes Act 56 of 2018

- Only 2 votes against in the General Assembly
- Signed by Gov. Wolf, 6/28/2018
- Effective dates
  - For petitions: 12/26/2018
  - For automated sealing: 6/27/2020 deadline (implementation started 6/28/2019)
  - Other provisions of the law: 6/28/2019
- ***First automated sealing law in country; 30 million cases to be sealed! 5M sealed at this time.***

# Clean Slate: What You Need to Know

# Petitions! Why are We Talking About Petitions?!

- Many offenses can only be sealed by petitions (M1s, simple assault), or a person's overall record is disqualifying for automated sealing (i.e., ever had a felony conviction).
- The data may not be in the system to allow automatic sealing (grades are often missing).
- For some people, expungement if available will be worth the extra effort (such as workers who need FBI checks).
- You might want to seal someone's record before the implementation of automatic sealing.





# General Rules for Sealing Petitions

- 1) Generally, most misdemeanors can be sealed, if there has been a 10-year period free from F/M convictions. (Giulian issue.)
- 2) Fines and costs must be satisfied (also true for automatic sealing).
- 3) M1s – some exclusions (see chart). Almost all other Ms are eligible.
- 4) Rest of the record must be examined for complex disqualifications.

# Petitions: M1 Exclusions

- Art. B offenses (crimes of violence)(i.e., terroristic threats, stalking)(not too many M1s in Art B)
- Art. D offenses (crimes against family)(i.e., endangering welfare of children)
- Firearms offenses
- Tiered sexual offenses or required to register or sex offender
- Corruption of minors
- Attempts, conspiracy, or solicitation to commit any of above

# Petitions: Disqualifications

- Lifetime: Murder, F1, or 2 or more PWIDs
- Last 20 years:
  - 4 or more M2s or higher
  - Felony involving Art. B, Art. D, firearms, or tiered sex offenses
- Last 15 years:
  - 2 or more M1s or higher
  - Certain offenses (indecent exposure)
- Never disqualifying: arrests, summaries, M3s



# Automated Sealing

## Non-Convictions and Summary Convictions

- Great for non-convictions: sealed in 60 days
- Great for summary convictions (but 10 years until automated sealing; can still expunge after 5 years)
- Some situations where expungement remains worth the effort.

# Automated Sealing - Misdemeanors

- Narrower criteria for automated sealing of misdemeanors than by petition.
  - Not eligible: M1s, simple assault, etc.
  - Disqualified from sealing if ever convicted of F, convicted of 4 or more Fs+Ms, etc.
- Automated sealing will only be as good as the data that AOPC/PSP have to work with. Get missing data inserted?

# Notice of Sealing/Access to Sealed Records

- Check public access on UJS portal to see if cases are there.
- Obtain access to sealed cases through access & review procedures, 18 Pa CSA Sect. § 9151.
  - PA State Police
  - Courts – access to orders/files by individual/attorney.

# Users Retaining Access to Sealed Records

- Law enforcement
- CYA/DHS for C&Y cases
- Pursuant to court order in custody/PFA case
- Pursuant to court order where employer fighting negligent hiring case
- Federally required background checks
- Bar admission

Also, a case sealed can be vacated upon motion of prosecutor under limited circumstances.

## Other Improvements in Act 56

- Some juvenile cases made confidential.
- Sealed cases no longer can be considered by occupational licensing agencies.
- Expunged/sealed cases are not convictions prohibiting employment under state or federal law.
- Spells out meaning of expungement/sealing – not supposed to be asked to disclose exp/sealed cases; clients can respond as if the offense did not occur (unless asked by one of the permitted users).